BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.08.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17701 of 2024
and
W.M.P.(MD)No.15186, 15187 & 15189 of 2024

M/s.Umesh Electricals,
Represented by its Proprietor Kannan. ... Petitioner

Vs.

1.Commercial Tax Officer,
Tuticorin-1 Assessment Circle,
No.6R, North Cotton Road,
Thoothukudi,
Tamil Nadu – 628 001.

2.The Bank Manager,
Canara Bank,
Mattakadai Branch,
Thoothukudi – 628 001. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the first respondent in Order No.ZD330224112844R dated 20.02.2024 and quash the same as illegal and remand the matter for re-consideration.

For petitioner : Mr.P.Selvakumar

For respondents : Mr.R.Suresh Kumar
Additional Government Pleader for R1
Mr.C.Deepak, Standing Counsel for R2
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ORDER

Heard learned counsel for the petitioner, learned Additional Government Pleader for the first respondent and learned Standing Counsel for the second respondent.

2. The petitioner is before this Court against the impugned order passed by the first respondent dated 20.02.2024 for the assessment year 2017-18 bearing reference in No.ZD330224112844R.

3. The impugned order has preceded the notices in ASMT-10 dated 14.03.2023, DRC 01A dated 21.07.2023 and DRC 01 dated 05.09.2023. The petitioner was also issued with a notice for personal hearing on 11.09.2023 through GST common portal.

4. It appears that the petitioner has failed to take advantage of the same and

has thus, suffered with adverse order in the hands of the respondent. The petitioner seeks one opportunity to explain the case.

5. According to the petitioner, the petitioner has a fair case to establish that there is no mismatch between the Return in GSTR 1 and GSTR 3B.

6. The learned counsel for the petitioner submits that on the other issues also, the petitioner will be able to substantiate the case.

7. The above submission is opposed by the learned Additional Government Pleader for the first respondent, on the ground that the Writ Petition is hopelessly time barred and therefore, liable to be dismissed, on account of latches, in the light of the decision of the Hon'ble Supreme Court in the case of ***Assistant Commissioner (CT) LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 SCC Online SC 440.***

8. It is submitted that the appellate remedy is also time barred in terms of limitation under Section 107 of the respective GST Enactments as held by the

Hon'ble Supreme Court in the case of ***Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70*** and submitted that this Writ Petition is liable to be dismissed.

9. Having considered the arguments advanced by the learned counsel for the petitioner, the learned Additional Government Pleader for the first respondent and the learned Standing Counsel for the second respondent, this Court is of the view that the petitioner may have a case on merits and therefore, discretion is exercised partly in favour of the petitioner by quashing the impugned order and remitting the case back to the first respondent to pass a fresh order on merits, subject to the petitioner depositing 25% of disputed tax to the credit of the first respondent from its Electronic Cash Register within a period of 30 days from the date of receipt of this order.

10. The impugned order, which stands quashed, shall be treated as addendum to the show cause notices that preceded the impugned order.

11. It is expected that the petitioner shall file a reply within a period of 30

days from the date of receipt of a copy of this order, together with above deposit. The first respondent shall pass a fresh order on merits and in accordance with law as expeditiously as possible preferably within a period of two months thereafter. Needless to state, the petitioner shall be heard before passing the order.

12. Subject to the petitioner depositing the aforesaid amount, the petitioner's Bank Account shall be de-freezed or in alternative the aforesaid amount shall be recovered as pre-deposit from the petitioner's Bank Account.

This Writ Petition is disposed of, with above direction. No costs. Consequently connected miscellaneous petitions are closed.

01.08.2024

Index : Yes / No
Internet : Yes / No
apd

To
Commercial Tax Officer,
Tuticorin-1 Assessment Circle,
No.6R, North Cotton Road,
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Tamil Nadu – 628 001.

C.SARAVANAN, J.

apd

W.P.(MD) No.17701 of 2024

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